Legislative Business —(*contd.*)

THE TRAVANCORE COMPANIES BILL—(*Contd.*)

PRESIDENT : We were considering clause 4.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Legal Remembrancer*) : We have received certain motions regarding the clauses that have already been considered. Can they be admitted ?

PRESIDENT : No. The clauses are passed and those amendments cannot be allowed.

MR. PUTHUPALLI S. KRISHNA PILLAI : The motion relates to the omission or the deletion of sub-clause 3 of clause 4. As I submitted yesterday it seeks to exclude joint families or a single joint family from the operation of sub-clauses 1 and 2. The question was put to me yesterdey by the honourable member, the mover of the motion, as to whether it means only Hindu joint families. I find that Muhamedans, Christians and several others for instance, the Sikhs also follow the Hindu system of inheritance and succession, the joint family system of management of the family and various other rules of the law governing the Hindus. It is for that reason that this section has adopted the expression "joint family," instead of "Hindu joint family." In adopting that expression it cannot in any way be said to create any ambiguity in the provision. It includes only a joint family carrying on joint family trade or business. It can only be those joint families which have the essence of the Hindu Law the rule of survivorship and which have all the characteristics of a Hindu joint family. It is only that class of joint Hindu families which will be included and dealt with in sub-clause 3. Why a joint Hindu family should be excluded from the operation of sub-clauses 1 and 2 have been discussed ? I am presently submitting the case of the peculiar nature of the rights and privileges of a joint Hindu family. In the case of a joint Hindu family business only the Kartha can represent the family. All the members of the family are not partners or members of such a concern. It may be that the property may be liable for the common debt. But the members of the family do not as a matter of course, become liable for the debts except when they of their own accord take part in its management. The joint family standing by itself when carrying on joint family business does not constitute a partnership. It is a legal entity in itself As that is a peculiar feature of the system prevailing under the Hindu Law it has been thought necessary that such joint families should be excluded from the operations of sub-clauses 1 and 2. It is a creature of law but not a creature of agreement. It does not come into existence by force of agreement but it is recognised to exist by force of law. The law on the subject is discussed in 1930 P. C.

It is on account of this special feature of the Hindu joint family that a provision has been introduced in British India corresponding to our clause 4. Our own courts have accepted and have been acting on

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[Mr. Puthuppally S. Krishna Pillai.]

that principle. As regards the question of excluding two or more joint families carrying on partnership business it has been agreed to in the British Indian Legislature that it is a case which ought to be dealt with separately and appropriately brought in under the restrictions contained in sub clauses 1 and 2. It has been found in actual practice that such families become partners not because of the rule of Hindu law but because of some agreement entered into between them. Hence the 2nd portion of sub clause 3.

Partnership itself is based on agreement and therefore when two or more families enter into a partnership it is not in any way materially affected by the law relating to a joint family business. They are mainly covered by the agreement. Therefore the only business which has been excluded from the operation of the Companies Act is the business carried on by a single joint family. All other associations formed for the purpose of carrying on trade for the purpose of making profits have been brought within the prohibition contained in sub-clauses (i) and (ii). I think it is the only consistent and convenient course to be adopted to do justice to those who enter into dealings with them. So I am of the opinion that those provisions should be retained. With these words I oppose the amendment.

MR. K. T. THOMAS: Having heard the arguments of the honourable Legal Remembrancer for the necessity of including sub-clause (iii) I feel much pleasure to point out that the same argument hold good for deleting the clause. Therefore my amendment is absolutely necessary and sub-clause (iii) does not *ipso facto* seem to be necessary. So that, if the intention for the inclusion of this sub-clause is to include the Hindu Joint Family alone it may be made clear. But the very wording of the provision includes non-Hindu Joint Family which follow Hindu Joint Family System. And therefore my amendment is absolutely necessary. It is due to the absence of particular reference to the *Hindu* Joint Family, that the sub-clause reads and imports the meaning that it applies to any Joint Family. This House was told in the morning about other persons and communities which follow the Joint Hindu Family system. The fact is that while the Joint Hindu Family is a creature of law, the joint family cannot possibly be a creature of that kind. But it must necessarily be a creature of agreement. Therefore it is all the more necessary that sub-clause (iii) should be so recast as to bring within its scope Joint Hindu Families and such families as follow the Hindu System of Joint Family. If such an amendment is not accepted, sub-clause (iii) should be deleted on the ground that it is anamalous and is against the real intention of the bill.

Looking back to the history of the sections 1 and 2 of clause 4, we find that it is modelled on the English Act which was made owing to the difficulties of persons contracting with associations not being able to know with whom they were contracting. They found it difficult to know who exactly ran the associations or firms. That is, where unknown bodies or rather, bodies which were incapable of identification—fluctuating bodies carry on large scale businesses or trade. The difficulty

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arises to those people who enter into contracting relations with such bodies. To make it possible to deal with them, such a law was made in England.

The idea behind this enactment of sub-clause (iii) is to extent it to the Joint Families which are known, that is Joint Families which deal with contracting parties or third parties as one legal entity. Thus the liability can be fixed on the manager of a Joint Hindu Family and the Joint Family properties may be made liable. Therefore it is imperative that sub-clause (iii) should not be allowed to stand as it is. The fact is recognised that sub-clause (iii) is word for word found in the British Indian Act as well. That there is a provision of that kind in the British Indian Act merely by itself does not in any way make out a case for this enactment in this House. The question is whether in the circumstances and conditions in which we are placed it is necessary to have this provision.

MR. PUTHUPALLI S. KRISHNA PILLAI: May I know what the Honourable member understand by the term Joint Family as a legal expression used in the Statutes or in Law?

MR. K. T. THOMAS: The difficulty is exactly there. While a Hindu Joint Family is known to law, a Joint Family as such is not known to law as an entity.

MR. PUTHUPALLI S. KRISHNA PILLAI: Is it not the principle that the rule of survivorship is the first and most important element for the Joint Family? And may I know from the member whether the Joint Family System is prevalent in any other law than Hindu Law?

MR. K. T. THOMAS: Sir, no legal disquisition arises. The question is with regard to the scope of the provision. The provisions as explained by the Legal Remembrancer are meant to apply to the Joint Hindu Families or families which follow the Joint Hindu Family system. If that be so, the law must be absolutely clear on that and not leave it as anamalous.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I may be permitted to submit a word of explanation. I made the position clear because the learned mover yesterday did not seem to understand what is meant in this provision.

In law, there is only one meaning attached to what is called Joint Family. The essential feature of the Joint Family is the principle of survivourship. It is not found in any other system of law. Therefore when in any law or in any statute it is said Joint Family, it can mean only a Joint Family with the right of survivorship. In ordinary parlance we may say that we are all living jointly or we are all members of an undivided family but the expression Joint Family is technical. This system is only found in Hindu Law. Therefore it is that this expression is retained in the British Indian Act. My friend the mover of the amendment suggested that the word Hindu must be inserted somewhere in the clause. Such an amendment has not yet been proposed. The only question here is whether this provision is to be retained or not. There can be no doubt that that it should find a place in the statute.

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PRESIDENT : Before putting this amendment to vote, I may point out exactly what the scope of this clause is. Under clauses 4, 1 and 2 no company or association can be formed unless it is registered as a company under this Regulation. In other words, under clauses 4, 1 and 2 there are inhibitions against carrying on business by a certain number of people. The object, I take it, of sub-clause 3 is to exempt those associations or individuals who under common or ordinary law of the land are allowed to conduct trading business without having impinged on them the disabilities or requisites provided for under this Regulation. This is, therefore, a proviso for sub clauses 1 and 2 and for keeping that proviso, the expression "Joint Family" has been used necessarily and inevitably. Wellknown Cutchi-Memon communities of Bombay who are enterprising merchants and the Borahs and Khojas who run large scale family businesses which they have been carrying on for centuries are untouched by the Companies Act as they follow the Joint Hindu Family System. It is in order to preserve the entities of such corporations which are found here or intended to be formed here that the respective provisions of this sub-section have been included in this enactment. This is the very reason why an identical provision is found in the British Indian Enactment.

MR. K. T. THOMAS : In view of the exposition given by the Chair, I do not intend to press the motion.

The question whether Clause 4 stands part of the bill was put to the vote of the House and carried.

Clause 4 was added on to the bill.

Clauses 5 to 10.

The question whether Clauses 5 to 10 stand part of the bill was put to the vote of the House and carried.

Clauses 5 to 10 were added on to the bill.

Clause 11.

MR. K. T. THOMAS : I beg to move that in clause 11, sub-clause (3) the words "except with the previous consent in writing of Our Government" may be deleted.

Sir, the object of my amendment that even Government should not have the authority or power to grant permission to get a company registered by any of the names mentioned in sub-clause (3). The earlier sub-clauses 1 and 2 do place restrictions on the liberty of companies to adopt names which are given in sub-clause 3 (*a*). I do not want that it should be possible even for Government to allow any company to couple its name with these terms. That is the object of my amendment and I move that it may be accepted by the House.

MR. PUTHUPALLI S. KRISHNA PILLAI : Sir, I oppose the amendment. This Clause is almost on the same lines as the corresponding section in the existing Companies Regulation, I mean the existing section 11. So that the provision which my learned friend seeks to delete is not a new provision, but which has been in existence in our law from the year 1092. I find by a reference to the Regulation 1 of 1063 which

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was repealed by the Regulation I of 1092 that a similar provision existed there. This Bill is drawn upon the lines of the statute relating to limited Companies in British India which is largely based on the corresponding English law. Even the most recent act that was passed in England namely, the English Companies Act of 1929 contains a similar privilege reserved with the Board of Trade. Section 172 of that Act clearly lays down that except with the consent of the Board of Trade no names similar to this shall be used. It is a privilege reserved with the Board of Trade in England. A similar privilege is reserved with the Governor-General-in Council in British India. Therefore, what I submit is that in all statutes relating to this matter, there is a similar reservation made. A similar reservation has been in existence, here in accordance with the Companies law, from the year 1063. It has not done anybody any harm. Whatever result there might have been, that was only for the good of the people. No special reason has been urged why such a provision should be rejected. Why such a privilege which was vested with Government till now, should not hereafter be enjoyed, is not explained. In England, the Board of Trade still enjoys this privilege. In India it still vests with the Governor-General. Therefore it does not stand to reason why such a privilege should be taken away from the Government here. If there is a reason for that, or if my honourable friend had urged a reason which would show that these words shall not be used by any person, I can understand my friend's attitude. These words, when used, would indicate some association with Government and these are not words which will indicate any association with anybody else. That being the case there can be nothing wrong in laying down this rule that it can be used only with the permission of Government. It is only a right which Government can use. The rule is so framed that no particular word shall be prohibited from being used, but that a word which has a particular meaning or which might carry some particular idea that it is associated with the particular authority may be used with the permission of that authority with which it might be associated. Sir, I oppose the amendment.

MR. K. T. THOMAS: It is after a reference to the British and Indian Acts that this amendment has been tabled by me. The honourable Legal Remembrancer has been saying that it is cruel.

MR. PUTHUPALLI S. KRISHNA PILLAI: I did not use that word.

MR. K. T. THOMAS: The question is not really the removing of these words from the words to be commonly used by people. It is whether an individual or a number of individuals should be allowed to couple the names of their Companies or associations with the words 'the Maharaja," "Rani" or "Princes," "Royal" etc. If it were a question of adding the names of the State or Government I would not probably have moved this amendment at all. The fact that we have had this rule from 1068 is not an argument for its retention here. Inspite of the fact that it was modelled on the British Indian Act I still feel that it should not be within the competence of Government to allow a

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[Mr. K. T. Thomas.]

body to couple with the name of an association or Company, the terms Maharaja, Rani and the like.

The amendment was put to vote and lost. Clause 11 was added to the Bill.

Clauses 12 to 43.

The question whether clauses 12 to 43 stand part of the Bill was put to vote and carried. Clauses 12 to 43 were added to the Bill.

Clauses 44 to 88.

Clauses 44 and 45.

MR. K. T. THOMAS: I don't move.

The question whether clauses 44 to 88 stand part of the Bill was put to vote and carried.

Clauses 44 to 88 were added to the Bill.

Clause 89.

MR. JOSEPH VITHAYATHIL (*Kunnatnad* cum *Parur*): Sir, I move that "In clause 89, the following may be added as sub-clause (3):

> "In the case of existing companies having less than three Directors, the requirement of this Section shall be deemed to be satisfied if the deficiency in the number of Directors is made up within six months from the date of the commencement of this Regulation."

In the case of some of the existing Companies it is possible that there may be only less than three Directors. To enable such Companies to comply with the requirement of this Section, it will be necessary to make changes in the Articles of Association. For that purpose an extraordinary meeting will have to be convened. Therefore, it is necessary that some time should be given to such Companies to satisfy the requirement of this clause. Otherwise, from the day this Regulation comes into force, such Companies will not be in a position to carry on business. My submission is that the sub-clause is absolutely necessary to safeguard the interest of such companies, and therefore I move that it may be added to clause 89.

MR. PUTHUPALLY S. KRISHNA PILLAI: It is not seconded.

MR. E. P. VARGHESE: I second it.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I oppose the amendment. I find that no time is granted to existing companies having only two directors for enabling them to so alter the articles as to make it possible to have three Directors. That question does not arise in Travancore because that clause relates to public companies. All such companies have to file their statements before the Registrar. So far, from 1092 up to this date, no company had been registered in Travancore which had not three or more Directors. How then is the absence of this provision going to affect our companies. I can, with certainty, affirm that there is not a single public company registered in Travancore which has not got more than three Directors. It is only for that reason that I oppose this amendment. It must have been so in British India and that is why such a safeguard was not found necessary there also.

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MR. V. K. VELAYUDHAN: Suppose a public company is going to be registered before this Regulation comes in.

MR. PUTHUPALLY S. KRISHNA PILLAI: We must take the risk. If a company for the purpose of creating trouble were to be brought into existence with only two Directors we will have to put up with the trouble and allow it also to come to grief.

MR. E. P. VARGHESE: Does not the present law permit the formation of such companies?

MR. PUTHUPALLY S. KRISHNA PILLAI: Yes. But it has not been availed of till now.

MR. JOSEPH VITHAYATHIL: On the information received that there is no existing company with less than three Directors, I withdraw the amendment.

PRESIDENT: If any company means to function with two Directors the company is inviting very serious troubles. I don't think it is a matter of practical politics.

The amendment was put to vote and lost.

The question whether clause 89 stands part of the Bill was put to vote and carried.

Clause 89 was added to the Bill.

Clauses 90 to 106.

The question whether clauses 90 to 106 stand part of the Bill was put to vote and carried.

Clauses 90 to 106 were added to the Bill.

Clause 107.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI (*Tiruvalla*): Sir, I move—

In clause 107, sub-clause (5), add the following explanation:

"For the purpose of this sub-section, director, or directors, if any, nominated or appointed by the managing agent shall not be deemed to be persons entitled to vote for the resolution."

Sir, sub-clause (5) of clause 107 provides that except with the consent of three-fourths of the directors present at a meeting of the Board of Directors of a company, a managing agent shall not enter into any contract with the Government for the purchase, sale and supply of goods. My object in proposing this amendment is to make it clear and definite that all the directors present at a meeting held for the purpose of considering the question of giving contract to a managing agent should not be entitled to vote for the resolution. Clause 1 (2) (ix) defines who are managing agents. It runs as follows :—

"'Managing Agents' means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called."

So, the managing agent may be a firm or another company. Clause 112 provides for and limits the number of directors who could be appointed by the managing agent when the company is managed by another company or firm. So, there is every possibility for one-third

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of the directors of the company being appointed by the managing agent. My amendment is to the effect that at a meeting of the Board of Directors held for the purpose of considering the question of giving a contract to the managing agent the directors appointed or nominated by the managing agent should not be allowed to vote for the resolution. Sir, this is to the best interest of the company and I see no reason why my amendment should be opposed even by the Legal Remembrancer.

PRESIDENT: Why *even*?

MR. PULIYOOR T. P VELAYUDHAN PILLAI: Because he is very vehement in opposing amendments.

Sir, under Clause 89 of the First Schedule annexed to the Bill the quorum fixed for the meeting of the Board of Directors is three. Take for instance a company which has got 9 directors, a company managed by a managing agent. Naturally that managing agent is entitled to appoint or nominate three directors under the provisions of the Bill from among their own members. If there are only five directors at a meeting of the Board of Directors three of them will naturally be the directors appointed by the managing agent and if the question of giving a contract to the managing agent comes up for discussion and a resolution is introduced to that effect, it will be very easy for them to get the resolution passed and that will adversely affect the interest of the main company. So, I submit that my amendment is absolutely necessary. It only makes clear that the directors appointed or nominated by the managing agent shall not be entitled to vote for a resolution which concerns them or in which they are interested. With these observations I commend my amendment for the unanimous acceptance of the House.

MR. S. KRISHNA AIYAR (*Nominated*): I second the amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I wish to bring to the notice of the learned member Clause 118 of the Bill, corresponding to Section 91 (B) of the British Indian Companies Act. "No director shall as a director vote on any contract or arrangement in which he is either directly or indirectly concerned or interested, nor shall his presence count for the purpose of forming a quorum at the time of any such vote and if he does so vote, his vote shall not be counted." Let us now read the provision of sub-clause (5)which is now sought to be made clear. "Except with the consent of three-fourths of the directors present *and entitled to vote on the resolution*" I lay emphasis on that expression, *Directors present and entitled to vote on the resolution*. Sir, the directors nominated by the managing agent would certainly be persons who are directly concerned or interested in a benefit which will be conferred on the managing agent by such a contract.

MR. S. KRISHNA AIYAR: Will the Legal Remembrancer tell us whether there is any ruling upon that subject?

MR. PUTHUPALLI S. KRISHNA PILLAI: Upon that subject.

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MR. S. KRISHNA AIYAR: That nominees of the managing agents will be taken to be Directors indirectly interested in the contract or otherwise.

MR. PUTHUPALLI S. KRISHNA PILLAI: I am not in a position now to quote any authority directly bearing on the question. But the general principles involved in decisions relating to this will clearly show that my position is correct. It has been held in various cases as to what exactly is ment by a direct or indirect interest. It may probably be that a Director nominated by the managing agent has no direct interest but can it ever be said that he is not even indirectly concerned in a contract which directly benefits the person who has nominated him? What will be the position of a Director who does not vote for a resolution brought forward for the benefit of his appointer? Immediately his nomination ceases. He is to be there only so long as it is the pleasure of the appointer. He can remove him at any moment. The ordinary rules of appointment, the duration of directorship and all that do not apply to him. This director has been nominated on the Board to safeguard the interest also of the managing agent.

MR. S. KRISHNA AIYAR: May I have information as to whether a managing agent cannot nominate a director for a term of years or months?

MR. PUTHUPALLI S. KRISHNA PILLAI: He can, but it will always be found that it is subject to good conduct or good behaviour as in the case of personal contract. It cannot be like the case of some people who after obtaining the benefit run away with the benefit and use it to the detriment of the person who conferred it. Such a possibility cannot be conceived of in the case of limited companies where you have got to deal with businessmen. Managing agents are persons who are well-versed in business dealings and in business transactions and I am quite sure that no managing agent will be foolish enough to part with such a right and allow himself to be persecuted by the person on whom he conferred a benefit. So, that question does not arise. In view of this fact, my submission is that it is an amendment which cannot be said to be absolutely necessary and as no strong reason has been brought forward why we should make a departure from what the Select Committee have agreed to, I oppose the amendment.

MR. S. KRISHNA AIYAR: Sir, the principle involved is accepted by the Legal Remembrancer. His only plea is that it is unnecessary on the ground that it will always be recognised that a director nominated by the managing agent will be taken to be an individual directly or indirectly interested or concerned in the contract *et cetera*. That is a statement about which he has not been able to point to any rulings. There may arise doubts. If it is already clear, the amendment may not be necessary. If it is not sufficiently clear we want it to be made clearer. That is the only point. I think the Legal Remembrancer can gracefully accept the amendment of Mr. T. P. Velayudhan Pillai.

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PRESIDENT: Order, order. It appears that this matter is governed by the general legal principle of preventing conflict between interest and duty. It has been so held in certain cases. I do not have the references handy but one of these is the case of Bray and Ford, a House of Lords, dicision. I do not think that the courts would hold a different view on this matter. It is entirely dependent on this House whether they would rather make the point perfectly clear by means of this amendment or would leave it to the general principle of preventing conflicts between interest and duty.

The amendment was put to the vote of the House and declared lost.

The question that Clause 107 do stand part of the Bill was put and carried and the clause was added to the Bill.

Clauses 108 to 110.

The question that Clauses 108 to 110 do stand part of the Bill was put and carried and the clauses were added to the Bill.

At this stage the President vocated the chair and the Deputy President presided.

Clause 111.

MR. JOSEPH VITHAYATHIL: Sir, I move that in Clause 111, the following may be added :—

> "A managing agent who engages in any such business shall be liable to a fine not exceeding one thousand rupees."

The clause, as it stands, prohibits a managing agent to engage in any business which directly competes with the business carried on by the company of which he is the managing agent. Now there is no sanction behind that prohibition. Suppose the managing agent engages himself in such a business. There is nothing to prevent him from doing so. So, in order to make the clause serve any useful purpose it is necessary to have a provision such as the one contemplated by my amendment. Therefore, I move that the clause proposed by me should also be added to clause 111.

MR. E. P. VARGHESE: I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI: There is no doubt that the proposed amendment is an innovation and it can be justified only if there are peculiarily appropriate conditions in this State, because in no other part of the world where the limited company system prevails has the penalty now proposed by the amendment been imposed. There is one reason why such a penalty has not been thought of anywhere else. The subject matter of this provision is so complex that it will always be very difficult to come to a final decision on such matters. I shall again read the section ; when it is carefully read it will be clear why no penalty has been imposed.

In the first place, the nature of the business must be the same. Even if there are material differences, the nature must be the same. And, the business must not directly compete with the business carried on by the company ; it will not be enough if it competes only indirectly.

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In the case of all the penal provisions contained, in the statute every thing is well defined. There is absolutely no difficulty in coming to a decision in those cases. If a return has not been filed before a particular date, he is penalised. The matter is very simple. That is not the case with the present clause. The expression "nature of the business" and the expression "directly competes" are, for instance, necessarily very indefinite so that it is not easy to come to a definite conclusion on the matter The question has been decided in several cases, for instance, in Dean *v.* McDowell and in Ass *v.* Benhan. There are also other cases in which the question has arisen; and it was after elaborate consideration of the facts, whether the business is of the same nature or whether it directly competes with the business of the company, that those cases have been disposed of. It is always very difficult to decide those questions of fact. My friend, Mr. Joseph Vithayathil asks "Suppose it is found that the managing agent of a company is carrying on a business which is of the nature of the business of the company of which he is the managing agent. Where is the provision for punishing him for that? Where is the penalty for that?" I may point out to him that no penalty is provided for in the British Indian Act; and that shows that the general law must guide in the matter. As has been held in Dean *v.* McDowell, it is open to the company concerned to show that the managing agent, in breach of the express prohibition in the statute, has been carrying a business similar in nature to that of the company's business and has been thereby diretly competing with the company, and that therefore the company is entitled to damages from the managing agent. Further, as has been held in Ass *v.* Benham, it is also conceivable that in proper cases the company may call upon the managing agent to account for the profit that the managing agent has made out of such business.

Now, Sir, the onus of proving all these is always on the company. It is the company that will have to let in all the necessary complicated evidence and conclusively prove the allegations against the managing agent.

MR. E. P. VARGHESE: When it is all conclusively proved, should there not be a penalty for the managing agent?

MR. PUTHUPALLI S. KRISHNA PILLAI: Once the case is proved against the managing agent, the general law will apply, as I have already pointed out.

MR. KOTTALIL P. ABRAHAM (*Muvattupuzha* cum *Devicolam*): May I ask the Legal Remembrancer whether any penalty is provided so far as the previous clause, number 110, is concerned?

MR. PUTHUPALLI S. KRISHNA PILLAI: No, there is none. With these observations, I oppose the amendment.

MR. JOSEPH VITHAYATHIL: Sir, the Legal Remembrancer argues that it is very difficult to prove that the business of the managing agent is of the nature of the business of the company and that it directly competes with it, and that in every case the onus of proving all that

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[Mr. Joseph Vithayathil.]

will be on the company, and that therefore there is no need to provide any penalty. Sir, in all criminal cases the onus is on the prosecution; still the punishment is fixed by the statute. Therefore, that certainly is no argument against the present amendment.

My friend, Mr. Abraham hinted that no penalty has been fixed with reference to clause 110. But, Sir, that is an entirely different matter. Clause 110 says that the managing agent has no power to issue debenture bonds. He is not authorised to do that. And, if he raises any debentures, the company will not be bound by the same. That is an entirely different matter. That clause serves its purpose even without a penal provision. But so far as the present clause is concerned no useful purpose will be served by it unless a penal clause is added to it. On the other hand, with regard to clause 110, no debenture issued by the managing agent will be binding on the company. That is an entirely different matter.

In regard to the present clause, I should think that there is no meaning in the provision unless a penalty is fixed; otherwise it will amount to a mere pious wish of the legislature.

MR. K. MADHAVA KURUP (*Ag. Director of Registration and the Registrar of Joint Stock Companies*): Will not such managing agent be liable for damages?

MR. JOSEPH VITHAYATHIL: He will be under the general law. For that matter, even without the present clause in the statute, the managing agent will be liable to the company if he conducts a business of his own by making use of his position as the managing agent of the company and by engaging himself in a business that competes with the business of the company itself. Even without the provision contained in the clause, the managing agent can be removed from office for competing with the company.

MR. KOTTALIL P. ABRAHAM: Will not the present clause be one of the sanctions for such removal of the managing agents?

MR. JOSEPH VITHAYATHIL: Without the sanction from the Legislature the managing agent can be removed for misconduct.

The clause, as it is, amounts to a mere pious wish of the legislature, and is meaningless.

MR. PUTHUPALLI S. KRISHNA PILLAI: Are there not various other provisions which do not fix any penalties and which are still enforceable? Does my friend suggest that for every stipulation in an enactment a penalty for the breach should be provided in the statute itself?

MR. JOSEPH VITHAYATHIL: That is not what I say. For this matter, unless there is a penal provision, no useful purpose will be served by the prohibition contained in the clause.

The amendment was put to vote and lost.

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The question that clause 111 do stand part of the Bill was put to vote and carried. The clause was added to the Bill.

Clauses 112 to 114.

The question that clauses 112 to 114 do stand part of the Bill was put to vote and carried. The clauses were added to the Bill.

Clauses 115 to 121.

MR. K. T. THOMAS: I beg to move the following amendment:—

'Delete the words 'within or abroad' in the marginal note'

(to Clause 115).

DEPUTY PRESIDENT: I do not think the amendment is in order since it relates to the marginal note. Marginal notes do not form part of the statute.

MR. K. T. THOMAS: It has been held that marginal notes do form part of the statute. It is within the power of the legislature to amend them.

DEPUTY PRESIDENT: Has the Legal Remembrancer any remarks to offer on the matter?

MR. PUTHUPALLI S. KRISHNA PILLAI: The marginal notes also are sometimes referred to in the interpretation of statutes. The present marginal note occurred also in the Bill as it was originally published. If there is anything inappropriate or wrong, it is open to any honourable member to point out the need for correction although such suggestions may not be called an amendment of the clause in the strict sense of the term. Because, standing order No. 25 says that every amendment must be relevant to and within the scope of the *subject matter of the clause* or motion to which it relates. According to the Rules, an amendment must be relevant to and within the scope of clause or motion to which it relates. Generally marginal notes do not form part of the clauses.

MR. K. T. THOMAS: Supposing we come across an absurd marginal note appended to the section, what is the remedy. Is it to stand as printed in the Bill ?

MR. PUTHUPALLI S. KRISHNA PILLAI: I will make a note of it.

The question that clauses 115 to 121 both inclusive do stand part of the bill was then put to vote and carried.

The clauses were added to the Bill.

Clauses 122 to 168.

MR. K. T. THOMAS: I had given notice of two amendments in respect of clause 122. Only one of the amendments has come up in the list. Therefore I may be permitted by the Chair to move both of them when only the amendments will appear all right. The first amendment is to delete the sub-clause 4 and re-number the following, and the second is, the deleted portion should appear as sub-clause 1 (*r*)

MR. PUTHUPALLI S. KRISHNA PILLAI: The Select Committee have already included that clause as desired by the member.

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MR. K. T. THOMAS: Then I do not move my amendment.

The question that clauses 122 to 168 do stand part of the Bill was put to vote and carried.

The clauses were added to the Bill.

Clauses 169 to 173.

MR. JOSEPH VITHAYATHIL: I move the following amendment:

"In clause 169, Sub-clause (1) (i), delete the words 'sworn to be and signed before a Magistrate' and insert in their place the words 'be sworn as an affidavit.'"

This clause relates to the authentication of balance sheet and profit and loss account or income and expenditure account. My point is that they need not be sworn to and signed before a Magistrate. The Magistrate has no authority to go into the question of the correctness of the statements contained therein. For the purpose of ensuring that the income and expenditure account and the balance sheet etc., are signed by the directors it is not necessary that they should be sworn as affidavits before a Magistrate. There are many other persons who are competent to swear affidavits. The balance sheet and the profit and loss account etc., will have to be prepared every year and to ask the Directors to go to the Magistrate for signing them before him will cause them unnecessary hardship especially in the case of Companies working in villages. There is no corresponding provision in the British Indian Act requiring the signing of the balance sheet etc. before a Magistrate. Therefore such an innovation is not necessary, A similar provision in clause 82 which relates to the statutory meeting of companies may perhaps be justifiable as statutory meeting takes place only once in the life of a company. As no distinction need be made between swearing before a Magistrate and before any other competent person the sub-clause has to be amended. A similar amendment has been made by the select committee in the case of clause 166. I therefore move that the sub-clause may be amended in the manner suggested.

MR. PUTHUPALLI S. KRISHNA PILLAI: In regard to this matter I am entirely in the hands of the House. In the case of a banking company the order says that the affidavit shall be sworn to and signed before a Magistrate. From the report of the Select Committee it will be seen that no distinction should be made between one person and another who has got authority to swear an affidavit. So far as I am concerned I do not oppose the amendment. But I leave the matter to the decision of the House because I find that in another clause, some such alteration has been made by the Select Committee. That is under clause 166. "Sworn to be and signed before a Magistrate" as originally provided was to take place before a Magistrate. The Select Committee said that it is not necessary that an invidious distinction should be maintained with regard to this matter. Therefore they thought that it might be omitted.

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MR. PULIYOOR T. P. VELAYUDHAN PILLAI: In this clause may I know whether it is a case of swearing an affidavit?

MR. PUTHUPALLI S. KRISHNA PILLAI: The clause relates to the authentication of profit and loss account, Income and Expenditure account and balance sheet, and refers to "sworn to before a Magistrate." Therefore I say the decision of the House may be taken in regard to this matter.

The amendment was put to vote and lost.

MR. JOSEPH VITHAYATHIL: The other amendments are consequential ones, and therefore I do not move them.

DEPUTY PRESIDENT: The question that clauses 169 to 173 do stand part of the Bill was then put to vote and carried.

The clauses were added to the Bill.

Clause 174.

MR. K. T. THOMAS: Sir, I beg to move the following:—

"Delete Clause 174."

MR. PUTHUPALLI S. KRISHNA PILLAI: On a point of order Sir. This is a motion to omit the entire clause. Under Standing Orders such a motion is not in order. According to previous Rulings of this House, such a motion will not be in order. A motion to omit the whole clause will not be a motion for amending it. I will refer to paragraph 68 of the Travancore Legislative Manual. The Rule says.—

"An Amendment may not be moved which has merely the effect of a negative vote."

I may also refer you Sir to the relevant Rulings on this point from our Legislature.

When Mr. G. Raman Menon moved for the deletion of clauses 3 to 5 in the Mines and Minerals Bill, the Law Member raised a point of order whether by accepting the amendment the House would not be going back on the principle that had already been accepted by it.

Mr. V. Subba Aiyar also raised the following objection: "I would also submit that the amendment is not in order, but not on the ground urged by my friend Mr. Parameswaran Pillai. The amendment proposes to delete certain clauses in the Bill. That is against Standing Order No. 24 (2) which runs as follows —

"An amendment may not be moved which has merely the effect of a negative vote."

The present amendment of Mr. Raman Menon proposes the negation of certain clauses. Hence it is out of order. Moreover, the practice everywhere else is that if the House does not want a certain clause, it will vote against it when the question is put. Therefore, any amendment which proposes the deletion of a clause, as a whole is not in order."

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[Mr. Puthupalli S. Krishna Pillai.]

The President ruled:

"Mr. Raman Menon, I find it necessary to rule both on the technical ground stated by Mr. Subba Iyer and on the ground of substance stated by the Law Member, that your amendment is out of order."

Precedents in British Indian Legislature also are in support of my position. I also refer to the decision 130 published in the Indian Legislative Rulings Manual. Under the rules the position is this. Each clause stands as it were that a motion has been made in regard to that clause that it stands part of the Bill. If any particular word or words of that clause have to be amended standing order 25 would be applicable. If any alteration is made in the clause itself then the clause as amended will be put to vote. It has been ruled on several occasions that if a member desires to record a negative vote of the whole clause he can do so only when the question is put. Therefore this motion is not in order.

(At this stage the President took the Chair.)

PRESIDENT: Has Mr. Thomas to say anything on the point of order raised by the Legal Remembrancer?

MR. K. T. THOMAS: The Legal Remembrancer has referred to Standing Order No. 25 where it is said that the amendment moved must be relevant to and within the scope of the subject matter of the clause or motion to which it relates. In regard to this question I would draw the attention of the House to Standing Order No. 44 in page 36 of the Manual.

"Amendments shall ordinarily be considered in the order of the clauses of the Bill to which they respectively relate, and in respect of any such clause a motion shall be deemed to have been made 'That this clause stand part of the Bill.'"

At the time the clause is called it necessarily means that a motion is deemed to have been made that the clause as brought forward do stand part of the Bill. It is open to any member to oppose that motion and address the House in support of his contentions.

PRESIDENT: The question is, to a certain extent, a point of form rather than of substance. As the honourable member has pointed out, when each clause is put to vote, there is a presumption or assumption that the Chair also puts the question that that clause do stand part of the Bill. That being presumed there can be no amendment merely to delete a clause. If an honourable member wants a clause to be completely deleted the proper way of doing it is to oppose the motion that the clause do stand part of the Bill. That is the meaning of the ruling referred to by the Legal Remembrancer. An amendment like the present one should not be moved.

MR. K. T. THOMAS: Will it not be open to any member at that stage to address the House on the grounds which leads him to oppose the motion.

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MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, may I draw your attention to the prior ruling relating to that matter. When the question is put all that the members have to say is only yes or no. Prior rulings show that no member has the right to make a speech at the time when the question is put. Only in one instance, that of Mr. Sambasiva Aiyar, for certain exceptional circumstances, was it allowed. It was in relation to the Agricultural Debt Redemption Regulation. It was as an exceptional case that the permission was then granted. But the ordinary rule and the convention of this House is not to permit a member to speak in opposition of a clause when it is put to vote.

PRESIDENT: The way in which it has been done elsewhere is this. An amendment of this kind is generally moved by saying leave out the following words beginning with the first one or two words of the clause and then the last word. That is the proper way in which an amendment which in essence to negative is moved. That is the usual practice. It is not the practice to say delete the whole of such and such a clause. That is not considered the right parliamentary procedure. But as this procedure has not uniformly adhered to and because there has been a certain amount of doubt, I shall allow discussion. Let me summarise the position so that there may not be any further difficulty. It is no doubt parliamentary practice that, so far as amendments are concerned, merely negative amendments are not in order. But the result sought to be achieved can be gained by moving an amendment saying that the following words be omitted. That may have the same result, but if that is not taken advantage of mere negativing will not do. It is generally not the practice to allow the members to speak when the question that such and such clause do form part of the Bill is put; I understand the Legal Remembrancer when he has just pointed out that the convention here is not that, I do not wish to make a departure from that practice. But in view of the uncertainty of the procedure in this case I allow the members to make any observations when the motion that this clause do form part of the Bill is put.

The motion is that clause 174 do form part of the Bill.

MR. K. T. THOMAS: I oppose it. Section 173 deals with the power of the Registrar to check the books of the company. Section 174 lays down that the Registrar shall have the power to call for any information or explanation he deems fit in respect of any matter on which report has been submitted to him under the Statute. Section 174 goes further. It says :—

> "The books, accounts and other records of a company required, by this Regulation or the Rules thereunder, to be kept, shall, at all times, subject to such rules, if any, as may be prescribed be open to inspection and audit at the office of the company by the Registrar or by any person....."

(At this stage the Secretary tried to cross the Hall between the speaker and the President.)

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PRESIDENT: The Secretary cannot cross the Hall between the Chair and the member speaking.

MR. K. T. THOMAS:

> "Authorised by Our Government in that behalf, and it shall be the duty of every officer of the company to produce to the Registrar or to the person authorised as aforesaid at the office of the company all books, accounts and other records in his custody or power relating to the company and to answer all questions relating to such books, accounts and records".

I oppose the retention of the clause. For reasons well known it is within the competence of the Registrar under clause 173 to call for information with regard to the accounts kept by a company and ask for explanation on matters, which he thinks should be explained in public interest as well as in the interest of the company. Clause 174 extends that power. A difficulty that is experienced by companies generally is lost sight of by the extension of this power, by empowering any person authorised by Our Government to that effect. So far as the Registrar is concerned he has ample power to have access to the books of the company. But Section 174 says that the power which can be exercised by the Registrar can equally be exercised by any other person authorised to do so by the Government. This extension of the power to any person other than the Registrar to inspect the books of the company is an unnecessary hardship and an infringement of the freedom of the company in the discharge of its proper functions.

PRESIDENT: The House will now adjourn and meet again at 2 P. M.

(The House adjourned at 1 p. m. and reassembled at 2 p. m. with the President in the chair.)

MR. K. T. THOMAS: Under clause 173, the Registrar is given the power to peruse any document which a company is required to submit to him and he may also call for any information from the company. Under sub-clause (3) of Section 173, any person who refuses or neglects to furnish any such information is made liable to a fine not exceeding Rs. 50 per day. Over and above that the second part of sub-clause (3) of Section 173 gives power to the Registrar to move the court to order the company to produce such documents as in its opinion may reasonably be required by the Registrar. Therefore the inclusion in Clause 174 of the term "Registrar" is a superfluity and the real purport of the section as it stands would be to compel a company to allow the inspection of its books to any person authorised by Government. Sir, while there is a Registrar who is competent to do this, I fail to understand the necessity for authorising any other person to inspect a Company's documents and books. I draw the attention of the House to the following Section 175 which empowers Government to appoint one or more competent inspectors, to investigate the affairs of any Company and to report thereon in such manner as our Government may direct. So that it may be

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seen that the Registrar may call for information from the Company or procure an order of Court for production of documents and inspect the documents and Government may also appoint one or more competent Inspectors to do this. So far as accounts are concerned, provisions are made for the appointment of auditors. The Company themselves may appoint their own auditors and the Government are also empowered to appoint their auditors. So, according to me, clause 174 is unnecessary and it would only entail hardship on the Companies. I may also before closing my remarks draw the attention of the House to the fact that this legislation which is modelled very closely on the British Indian Companies Act ought to have followed that enactment in this matter also. I do not find a clause in that enactment like Section 174 of this bill or rather the latter part of Section 174. That also may be taken into consideration by the House. With these words, I move the amendment.

MR. E. SUBRAMONIA AIYAR (*Nominated*): Sir, as I understand my learned friend Mr. K. T. Thomas, his objection to Section 174 is two-fold. One is that it is superfluous because all that is necessary is contained in the preceding Section 173 and the subsequent Section 175. The other is that this section is not in consonance with the recent Companies Act in British India. My submission to this House for its consideration is this. I am unable as I read Section 174 to subscribe to the conclusion that it is unnecessary but even granting for argument's sake that it may overlap Section 173 it cannot be deleted as we insert provisions in a statute by way of superabundant caution.

The real question for the consideration of the House must be whether in the interests of joint stock companies or organisations and in the interests of the well-being of the state a provision like this is necessary. That is the point of view which this legislature should take into consideration. Now it was suggested that it will entail considerable hardship on the operation of a joint stock organisation. In other words it will delimit the freedom which the organisations or the directors of such organisations may have. Here one point ought to be emphasised. The so-called freedom or right of a person is really relative. What one individual may be permitted to do surely no one will allow an organisation to do. You will find whenever an organisation is brought into existence considering the number of individuals involved the State steps in to regulate the activities of that organisation whether those activities are in the economic field or in any other branch. Therefore I say that this Section 174 which merely says that permission or authority is reserved by the Government for the purpose of Inspection and audit of the working of the Company is not a limitation upon the freedom of individuals. I would submit that it would be going too far if you say that it would hamper the freedom of individuals. If you want the organisation, the very purpose for which a company is floated to be fulfilled, this fundamenatl principle of check and control should be rigidly applied. We can allow two persons, or three persons or four persons or for that matter 5 persons to

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work out their schemes without any check to their freedom. But in the case of a banking concern a number of persons are involved in it. First of all before a Bank is started by a number of persons beyond a definite number should register their concern under the Regulation of the State. That is the main fundamendal basis. Here it is that I find that the Companies Regulation has included with definite purpose even Joint families. Well there was a good deal of discussion with regard to this. So far as the Joint family is concerned, the legal entity comes in only with regard to single family but when two joint families come in that privilege is taken away as the number of adult members exceed the limit prescribed by the Regulation. If any organisation want to get the privilege of legal entities certainly it must be registered under this Regulation. Let us see what does Section 124 say. It says as follows:

> "The books, accounts and other records of a company required, by this Regulation or the Rules thereunder, to be kept, shall, at all times, subject to such rules, if any, as may be prescribed be open to inspection and audit etc., etc."

In other words apart from the audit by the auditors of the Company some person authorised by Government should also audit their accounts. Recent legislations made elsewhere show that provisions are made to make the audit work to be done more efficiently throwing greater responsibility upon the auditors. It is their duty to bring to the notice of the Directors as well as the shareholders the financial Condition of the Bank. It is not to be a mere formal examination but it must be a thorough examination. So the result of the audit must appear in the balance sheet. But here we go a step further. Their accounts are audited and once again superaudited by Government authorities that is by the Registrar. Probably Mr. K. T. Thomas will have no objection to the inspection and the audit of the Bank by the Registrar. He has pointed out that the Registrar has got all the facilities under Section 175 to do this adequately. But I dare say that it is not adequate enough.

MR. K. T. THOMAS: Does not clause 175 provide appointment of auditors by Government over and above the Company auditors?

MR. E. SUBRAMONIA AIYAR: I am fully aware of those provisions. In making laws we should never leave any loop hole, as it were for other hidden activities and motives to creep in. In other words if the contention that Sections 173 and 175 will suffice I will presently show that what is provided under Section 174 will only add strengthened emphasis to the principle underlying those sections though it may overlap these sections in some respects. In a comprehensive legislation like this, there is an attempt made to see, in fact, what was the law enacted in British India? But one cannot and should not always copy the British Indian Enactments whenever one can go further than that if it is advantageous. There is no harm in insisting on further safeguard

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and restrictions in a provision like this. Certainly no one will stand up and say that the Joint Stock Companies working in Travancore and elsewhere is completely perfect. We can only make safeguards. But human ingenuity may be able to get over all these. So the contention that this provision is a superfluity will not certainly appeal to you. You will all agree that inspection and audit by the Registrar is not unnecessary and injurious or detrimental. The crucial point is whether this Section is necessary or not. Coming to Section 173, I may say that the Section deals with the means by which the Registrar should get information from the Company. He is empowered to peruse the documents connected with the Company. So it is not merely the office file that he has to deal with but, the real books and documents of the concern. So a dual inspection and check will not be out of place.

Certainly a vigilent and intelligent Registrar may be able to make use of that power efficiently and effectually. But there is a limit, in all these matters, to human capacity and intelligence. But that is a different matter. When comming to Section 175, it is pointed out there, that it is again a question of investigation: that is an investigation by an application by the shareholders of the company. We all generally know that the shareholders of the company are concerned only with the dividends which they get. It is a known fact. In fact they are the receipients of passive capital. They have no active interest. In Clauses 1, 2 and 3 in Section 175 there is opportunity given to the shareholders to investigate the affairs of any company. But I doubt, speaking from my experience, whether a shareholder, or any group of shareholders, unless a fraction arises, will come forward and apply for an investigation to appoint a competent Inspector. Clause 1 under Section 175 says:

> "In the case of a banking company having a share-capital on the application of members holding not less than one fifth of the shares issued."

Clause 2 reads thus:—

> "In the case of any other company having a share capital on the application of members holding not less than 1/10 of the shares issued."

I take it therefore that in clauses 1, 2 and 3 in order that the machinary of Government may be set in motion, in order that the machinery under the first three clauses may be given effect to, the shareholders or the members must move. I am coming to clause 4. I say, to direct the machinery in Section 175 the first three clauses refer to shareholders. I am referring to the inactivity, generally, of the shareholders, because the shareholders may be in different places. If they get their interest or dividend regularly they are satisfied. The law may be a dead letter so far as the actual working is concerned.

Coming to clause 4 in that Section, it says "in the case" etc. In order that a Registrar may make a report, a certain amount of inspection and audit, no doubt after getting the information called for, is necessary. The next step will be to make a report to Government. If

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you grant that power must be reserved in the State, the State authorities should inspect and audit the accounts of the company whenever the necessity arises. If you grant that principle, the only question then is whether there should be a person other than the Registrar himself. Then, what is the magic in the Registrar? If you say that there shall be no inspection and audit by the authority appointed by Government, Government are not going to interfere, except the Registrar going into the Balance sheets and finding any defects. Then you can boldly say that you do not want this section. I don't think many of us will submit to that. If you once grant an audit and an inspection certainly it will be seen to be a safe guard. Then, people appointing Inspectors without taking the necessary precaution, arbitrarily, will be dispensed with. The Government will thereby be taking a responsibility. Otherwise the Government's action may be characterised arbitrary. Let them have the facts so that they may exercise their discretion and think whether an inspector should be appointed. Inspection is one thing and investigation means something else. Investigation takes place where something has gone wrong. So, in my view, with all respect, I think that Section 174 is a necessary one. Even if that Section does not exist, other sections will be strained and stretched to give power to the Government through the Registrar to do the very things which they wanted to do openly. In these words I regret I have to oppose the amendment.

MR. S. KRISHNA AIYAR: Sir, I wish to add a few words in further elucidation of the position taken up by Mr. Subramonia Iyer. Sections 173, 174 and 175 are three links in a chain and they cannot be considered one without the other. Under Section 173, Provision is made for the examination by the registrar of documents. If he finds that further information is necessary, he can call upon the Company to give such further information as may be necessary. On receipt of such further information, if he finds that all is not well with the company, he can make a report to that effect to the Government. There it stops. Under section 173 the Registrar peruses only *certain* documents and gets only *some* information. When the Registrar feels that further scrutiny is necessary, under section 174 he gets power to inspect all the statutory records kept by the company. It may be that the Registrar is not able to grasp the technicalities of every document or other records produced before him. For this purpose, to help the Registrar, the Government may appoint another authority, not merly to scrutinise the records, but also to audit the accounts of the company. The objection taken by Mr. K. T. Thomas was more against audit by an outsider than audit by the Registrar. This is an easy matter. If the Government appoints another officer and calls him "Registrar," the difficulty is easily got over. There can be co-Registrars and Joint Registrars. Coming to the question of audit at one stage or another every company is bound to render its accounts to an auditor. In ordinary cases when the annual audited report appears, it may be said that

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it was audited by the nominee of the Directors. The company may not have any objection to place their accounts before their own auditor. When a similar matter arose just an hour back, in the case of a Director nominated by the Managing Agent, it was said that the nominated Director would be deemed to be personally interested and take a prejudiced view. Comparing the one with the other, and taking the further fact that auditors are nominated by the Company itself, the general public has a right to view the question with a bit of suspicion. To allay this natural suspicion of the General public, Government propose to appoint a special auditor to audit the accounts of the company. What objection can an honest company have to this? A further audit by an officer of Government will be welcome to the share-holders. It must be welcome to the Managing Agent or Director. It must be welcome to the outside public as well. When a properly audited independent report appears in the papers, or is published, it strengthens the position of the company. Shares advance in value and the public are prepared to buy. That enhances the prestige and credit of the company. And this audit the company gets free of charge.

We next proceed to section 175. In the first place, under section 173, the Registrar inspects certain documents and makes a report to Government. As this was only based on a few documents under section 174 he next scrutinises all the records and with the help of an auditor, goes through the accounts and, say, finds something wrong. The question is what is to be done. When the public cannot be content with the auditor or Registrar merely submitting a report, something more has got to be done so that Government may be enabled to take further action. Then clause 4 steps in and Government takes action. I therefore oppose the amendment proposed by Mr. K. T. Thomas.

MR. PUTHUPALLI S. KRISHNA PILLAI; Sir, I may be permitted to add a few words. It has been pointed out that in British India, there is no clause corresponding to clause 174. The Honourable members therefore ask why, while we have been conforming to the provisions of the British India Act in respect of every Bill, a departure should be made in this case. There is a history relating to this section. It corresponds to the existing section 141 A of the Travancore Companies Regulation. It was introduced by an amending Regulation in the year 1110 and was passed by this House in the same manner and it has now formed part of the Statute as Section 141 A. The same is the case with the present clause 185 which corresponds to the existing section 150 A. Sir, these two clauses were found necessary and this House some three years back, found that it was in the interests of both the companies and the large number of shareholders who were interested in the advance of the companies that Government should have such a power conferred upon them.

It is common knowledge, I may even say that it is a notorious fact, that when once a company is formed and the directorate comes into power and all available money is pooled and brought into their hands, the share-holder ceases to exercise any control over it although the

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company law makes ample provision for that purpose. The reason is this. The joint wealth of the company is fragmented and lies distributed over a large class of people. It is not to the interest of one share-holder to rake up a question which might involve considerable difficulty and expenditure. It may not be possible under the circumstances to call together a large body of people to create public opinion and then to seek such powers as are available to them in a court of law or under clause 175. What generally happens is that the shareholders are sometimes permitted to hear something about what is known as an annual balance sheet. Sometimes they get notice of a general meeting. There have been several instances in which provision regarding notice of general meetings has not been complied with. When a share-holder in the fond hope that he would get an opportunity for representing to the general meeting what he has got to say about the company in which he holds shares goes to the registered office, he will be told that either the meeting was convened just five minutes back and had dispersed or that it may not meet for another 2 hours and that he should wait. He waits for some time and when he goes out to have a cup of coffee and returns before the two hours are out, the general meeting is convened, it may be, because statutorily it is only a quorum of five that is required to constitute a general meeting. There are abuses of that kind. In such cases who could afford protection to the shareholder? That is only one side of the picture. Let us turn to the other side of the picture. Suppose in the case of a particular company there is a general public opinion that that company is not functioning properly and as a consequence that company is being put into trouble. In such cases we want an arbitrator; we want an umpire. The company can seek the aid of Government and say—"Here is a lot of calumny against the company which is being run down. We want the aid of Government to vindicate our position." Under this clause the Government may direct that the books, accounts and other records of the company shall be open to inspection and audit at the office of the company by the Registrar or by any person authorised by the Government in that behalf. Suppose a company which is in trouble in Travancore wants to safeguard its position and to lay the entire facts before the public and for that wants the aid of an authority or a functionary which as an unbiased arbitrator can render substantial help. In that case it is open to that company to apply to Government and it is open to Government to appoint not only the Registrar but any other person. Even the Reserve Bank of India or the Imperial Bank may be appointed if they agree. It may thus be possible for the Government to enable the company to have its good name restored; it may be possible for the Government to allow the company to live on and have a more prosperous life. On the other hand if the complaint comes from the shareholders, it can soon allay the suspicions of the shareholders, or if there is anything wrong, to set right matters and to grant them redress. It is for that purpose and it is after a careful study and

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scrutiny of the working of the existing companies that such a Bill was brought in the year 1110 and it was because this House was convinced of the necessity for the proposal that it was unanimously voted upon and passed in the House. Now, have conditions changed during the last three years? I do not think that the shareholders are in a much better condition than before, nor do I think that the companies are more honest than they were before, that such a provision has become absolutely unnecessary. Except on the principle that it is not proper to confer powers on Government, I do not think there can be any justification for opposing the passing of this clause.

It was pointed out, Sir, that a similar clause does not exist in the Companies Act in British India. I concede that but it must be borne in mind that it is practically a defect in the existing Act there. Clause 173 corresponds to Section 141 of the British Indian Act. Sub-clause (5) says—"The Registrar shall report in writing the circumstances of the case to Our Government." This enquiry can be only meagre. If there is complaint that the report is based on inadequate materials the Government of their own accord act under this. They can do so of their own accord when they are satisfied that a fuller enquiry is necessary. Honourable members should also note that this power has not so far been exercised. Even though there was justification in very, many cases. Honourable members will kindly note that Clause 175 authorises Government to appoint inspectors if one or other of the three contingencies happens. In the case of a banking company one-fifth of the share-holders have to apply. Suppose one-fifth never come forward. So one shareholder goes about for enlisting the opinion of one-fifth. He is persecuted by the company who is in a much better position or the share holder is assaulted or hooted or prevented from persuing his lawful and legitimate rights. Practically in 99 out of every one hundred that provision under the existing circumstance is useless.

Coming to the second contingency. In the case of any other company one-tenth of the share-holders should come forward. That does not stand on a different footing from the first. The third is this—" in the case of any company on a report by the Registrar under Section 173 sub-section (5) or under Section 174, sub-section (3) or on the report of any auditors under Section 185." These are the three circumstances under which an order appointing inspectors might be passed by Government. One relation to the report under Clause 173 (5). Clause 174 provides for the next contingency as was pointed out by one of the learned members. That report will give the first occasion for the Government to proceed to make a further investigation; and a further investigation might bring to light various additional facts and circumstances and those circumstances might be availed of for this purpose. So, Sir, taking all these matters into consideration my submission is that the opposition is groundless.

MR. K. T. THOMAS: Does not Section 141 A of the British Indian Act provide the use that may be made of the report contemplated under Section 137 of the British Indian Act?

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MR. PUTHUPALLI S. KRISHNA PILLAI: It refers only to Section 138, The question that Clause 174 do stand part of the Bill was put and carried and the clause was added to the Bill.

Clause 175.

MR. K. T. THOMAS: As the earlier part of my amendment relating to the deletion of sub-clause (4) is unnecessary, now that Clause 174 has been added to the Bill, I will, if I am so permitted, only move that the explanation be deleted.

PRESIDENT: Yes.

MR. K. T. THOMAS: Section 175 which has been for some time in the consideration of the House provides for the appointment of inspectors by Government and sub-clause (iv) deals with how a report from the Registrar may be dealt with. The explanation is to the effect that the Registrar himself may be appointed as an Inspector under Section 175. The Registrar may act under Section 173 The Registrar may act under Section 174 also as Registrar. And now the explanation in Section 175 says that the Registrar may also be appointed as an inspector. I really fail to appreciate the necessity for appointing the Registrar as an inspector when even otherwise than as inspector he can exercise all the powers that are available under Sections 173 and 174. I therefore move that the explanation be deleted.

MR. P. KUNJUKRISHNAN (*Quilon cum Kottarakara*): I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI I oppose the amendment, Sir. Of course it was stated that the Registrar can function under Section 173 and 174. One thing is certain. The Registrar goes to the company and makes an investigation under Section 173 or 174. With the experience so gained, he will function better as an Inspector under Section 175. That position cannot be controverted. The investigation under Section 173 is very much limited in scope. The next step is under Section 174 and even there it is not a full investigation. It is only the books and accounts and other records of the company required by this regulation or the rules made thereunder that may then be looked into. It is not a thorough investigation into the affairs of the company. An inspector appointed under Section 175 is entitled to make further investigations, call for evidence, call for documents, examine the officers and other persons and even call in independent witnesses. It is such an enquiry that has to be conducted under Section 175. Therefore it may not be a case of superfluity in the case of the Registrar if he is appointed to function as an inspector, but a case of thoroughness and expedition in the investigation of the affairs of the company.

MR. E. SUBRAMONIA AIYAR: There is just one discrepancy to which I may draw the attention of the Legal Remembrancer, although I do not know whether it can be remedied at this stage.

In clause 174 (3) it is stated " The Registrar *or other person*..... may report.....". But, in clause 175, for action being taken under that clause, reliance is placed on the report only by the Registrar and not by any other person authorised by the Government.

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PRESIDENT: That will have to be raised at a later stage.

MR. PUTHUPALLI S. KRISHNA PILLAI: I do not see any objection Sir, to the retention of the explanation.

MR. K. T. THOMAS: May I ask if there is a similar explanation in the corresponding provision of the British Indian Act?

MR. PUTHUPALLI S. KRISHNA PILLAI: No, Sir.

The amendment was put to vote and lost.

The question that clause 175 do form part of the Bill was put to vote and carried. The clause was added to the bill.

Clauses 176 to 178.

The question that clauses 176 to 178 do stand part of the Bill was put to vote and carried. The clauses were added to the Bill.

Clause 179.

MR. K. T. THOMAS: Sir I beg to move the following amendment:—In sub clause (1) line 5 delete the words 'or other Law Officer.'

The necessary result of this amendment will be that all prosecutions under Section 176 will be founded always on the advice of the Advocate General. "Or other Law Officer" can only mean some officer lower than the Advocate General, because we have no law officer higher than the Advocate General. The purpose of my amendment is that prosecution under Section 176 should always be founded on the most competent advice that Government can get, in other words, the advice of the Advocate General and not of any other Law Officer. I therefore move the amendment.

MR. P. K. KUMARAN (*Kunnatnad* cum *Parur*): I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI: I oppose the amendment. The corresponding provision in the British Indian Act is Section 141 (*a*), and under that Section the prosecution can be based on advice by the Advocate General or by the public prosecutor. It is not clear to me why, when companies registered in British India do not want to indulge in the luxury nowdemanded by the honourable mover of the amendment, companies registered in Travancore should alone have the luxury of all prosecutions being based on the advice of the Advocate General alone. What the expression 'Public Prosecutor' means for our purposes in Travancore, is mentioned in the Criminal Procedure Code. At any rate in this matter, I submit we can rest contend with what is done in British India.

I oppose the amendment.

The amendment was put to vote and lost.

The question that clause 179 do stand part of the Bill was put to vote and carried. The clause was added to the Bill.

Clauses 180 and 181.

The question that the clauses 180 and 181 do stand part of the Bill was put to vote and carried. The clauses were added to the Bill.

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Clause 182.

MR. K. T. THOMAS: I beg to move the following amendment :—
'Recast sub clause (2) as follows :—

> "Our Government may by Notification in our Government Gazette and after previous publication, make rules providing for the grant, renewal, or cancellation of such "certificates and prescribing conditions and restrictions for such grant, renewal, or cancellation."

The main object of the amendment is, as will be clear from a reading of it, to insist on previous publication of the Rules before they are enacted.

The amendment also proposes the deletion of the last sentence of the sub-clause.

MR. PUTHUPALLI S. KRISHNA PILLAI: I oppose the amendment. After all, it is only a verbal change that the mover of the amendment purports to make. The clause as it stands was drafted by the Select Committee and is perfectly clear. In what way it is defective and needs amendment has not been stated. Perhaps if my friend had been in the Select Committee he would have worded it as he now proposes.

MR. K. T. THOMAS: On a point of order. Is it open to a member to divine what another member has in his mind.

MR. PUTHUPALLI S. KRISHNA PILLAI: All that I wanted to point out is that there is absolutely no difference in substance between the present provision and the amendment proposed by my friend ; it is all a question of form ; and I merely suggested that my friend, when he sent up the amendment must have been under the impression that his wording of the provision is better. That is all that I say.

We are not going to improve the provision at all by accepting the amendment. I therefore oppose it.

MR. K. T. THOMAS: What about the insistence on previous publication of the rules, which is the main point of the amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI: On that, I may say that I am quite prepared to consider it if an appropriate amendment is brought forward.

The amendment was put to vote and lost.

The question that clause 182 do stand part of the Bill was put to vote and carried. The clause was added to the Bill.

Clauses 183 to 334.

The question that clauses 183 to 334 do form part of the Bill was put to vote and carried. The clauses were added to the Bill.

Clause 335.

MR. K. T. THOMAS: Sir,I beg to move the following amendment:—
Delete the proviso after sub-clause (ii), in sub clause (3).
The Proviso runs as follows :

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"Provided that Our Government may, by notification in Our Government Gazette, subject to such restrictions and conditions, if any, as Our Government may therein prescribe, exempt any such company or any class of such Company from this requirement."

This clause governs companies registered outside Travancore. It vests in the Government the right to exempt such companies from the operation of clause 335. To me it appears that such exemption in other words, such undue preference need not be shown to companies registered outside. No discrimination need be shown between companies registered here and those registered outside.

MR. N. NARAYANA KURUP (*Ambalapuzha* cum *Shertala*) : I second the amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI: I oppose the amendment. Clause 335 of the Bill corresponds to Section 228 of the present Regulation. The proviso now in question is only an adaptation of the present law. I do not think it is alleged that the Government have improperly exercised this power conferred on them. This power has to be exercised in favour of companies which are unable to file their balance sheet for the reason that under the statute under which they have been registered there is no provision for any balance sheet.

At the same time it may be asked why such an exemption should be given in favour of the company. Why should not this Legislature say that such companies need not function here? To me, it appears that the functioning of such a company will be in the further interest of the people of the State. I ask, will there be an occasion for such abuse of power? This provision is only to enable Government to allow such institutions to exist in the State. Better reasons should have been adduced by the mover to induce the House to accept his amendment. Under these circumstances, I oppose the amendment.

PRESIDENT : The amendment before the House is that in clause 335, sub clause (3), delete the Proviso after sub-clause (ii).

The amendment was put to vote and lost.

The question that clause 335 do stand part of the Bill was put to vote and carried.

The clause was added to the Bill.

Clauses 336 to 340.

The question that clauses 336 to 340 do stand part of the Bill was put to vote and carried.

The clauses were added to the Bill.

Clause 341.

MR. K. T. THOMAS : Sir, I move the following amendment.

In clause 341, sub-clause (12), line 2, delete the words "having objects similar to those of the company." According to the definition a banking company is a company which carries on business in respect of accepting deposits of money on current account or otherwise, notwithstanding that it engages, in addition, in many items as provided

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[Mr. K. T. Thomas.]

in the provisions of the Bill from sub-clauses 1 to 17. In fact it can hold shares in other banking companies. The expression, 'having objects similar to those of a company' necessarily means that the company in which shares are sought to be held by a banking company under Section 341 are banking concerns. I do not at all think it desirable that the scope of a banking company's investment should be limited to banking companies. Therefore it is I move for the deletion of the words "having objects similar to those of the company."

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I oppose the amendment. There is no doubt a general statement contained in sub clause (1), namely, that a company which carries on as its principal business the accepting of deposits of money on current accounts etc., may also carry on the acquiring, holding under-writing and dealing in stock, funds, shares etc. These are only general descriptions of the nature of the ordinary business carried on by banks. In these many restrictions are made. A further restriction is made in sub clause 12 This sub-section relates to a case of holding shares in other companies. What I wish to emphasise in this connection is that sub-clause 12 restricts the right of acquiring and holding of shares in other concerns. The reasons are obvious. A banking company should not be permitted to fritter away its funds in acquiring shares in concerns which do not carry on business similar to the business that is carried on by the banking company. The whole of this section is based on the various recommendations made by the Banking Enquiry Committee and it has been carefully drafted so that, one section may not come into conflict with the other. It is certainly in the interest of Banking concerns that there is such a restriction placed upon their powers. Suppose a Banking Company invests its money on shares in another Company carrying on business in iron or a Company engaged in working a gold mine. You cannot easily convert the share and get money in times of need. On the other hand if a Banking Company invests its money in the shares of another Banking Company it can always command its help. A Banking Company can either seek help or control another banking concern. Such actions may be of great help between one another. But if a Banking Company were allowed to have investments in The tata Iron works or in gold mines in Africa, at a time when money is demanded here, shares will be there but the money will not be coming here. In order that risks may be less, this provision is made and it is designed for the benefit of all people concerned.

PRESIDENT: The amendment before the House is that in clause 341 sub-clause 12, line 2, delete the words having objects similar to those of the Company.

The amendment was put to vote and lost.

MR. JOSEPH VITHAYATHIL: Sir, I move that the proviso in clause 341 be deleted.

The proviso in this Section is in the nature of an explanation. If the proviso stands, banking companies cannot conduct chit ies. In the rst place, the proviso cannot be justified on principle. The Starting

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and conducting of chitties is virtually doing banking business. According to sub clause (1) of this Section, it is said that borrowing, raising or taking up of money, the lending or advancing of money etc. are forms of business which a banking company can carry on. In the case of a chitty, what is really done by the foreman is taking money and advancing it on security. Thus practically, the starting and conducting of chitties comes under sub clause (1). Therefore there is no meaning in saying that a banking company should not conduct a chitty.

An objection may be raised that in the case of chitties, advances are given on long term credit. But there is nothing in the section that prohibits banks from advancing money on long term credit. Moreover in most cases, chitty amounts are advanced on securities and therefore the position of the banks will be safer than in the case of ordinary unsecured advances.

Again, there is a special regulation for the conduct of chitties and it is intended to safeguard the interests of the subscribers. Experience also suggests that chitties started by banks are more satisfactorily conducted than those conducted by private individuals. It cannot also be said that banks suffer on account of the starting of chitties. In most cases chitties afford a good source of business for banks.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : Is the member aware of the recommendation of the Banking Enquiry Committee with regard to the starting of chittes ?

MR. JOSEPH VITHAYATHIL : Yes. But I do not think that it is sufficient justification for prohibiting the starting of chitties by banks. From my own experience, banks conduct chitties much more satisfactorily than private individuals. The question is after all whether chitties should be allowed to be conducted whether by banks or by private individuals. There is a Regulation relating to that matter, and it is intended to safeguard the interests of the subscribers. In the British Indian Act, there is no such proviso. In Cochin, there is a special provision enabling banks to conduct chitties. From the stand point of the public revenue also, I may say that Government will have to lose a good income if the proviso is allowed to stand. For all these reasons, I think that there is no justification for a proviso of this nature to Section 341 and I therefore move that it may be deleted.

MR. KOTTALIL P. ABRAHAM : I second it. I myself have tabled a similar amendment. The business of a banking company is described in the several sub-clauses of the main clause. Sub-clause 3 allows a bank to engage in "contracting for public and private loans and negotiating and issuing the same." The bank of course receives deposits and gives loans of money. In a chitty scheme, the foreman collects money from the subscribers and disburses the same amongst the subscribers. Sometimes, defaults are noticed on the part of the subscribers and consequently on the part of the foreman also. When such defaults occur, if the foreman be a bank which can command money, the chitty would

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[Mr. Kottalil P. Abraham.]

conveniently go on. Money collected in the chitty scheme will be easily deposited in the bank. The banking concern and the chitty concern can be of help to each other. In fact, it is very convenient for the Banks to start and conduct chitties. On considerations of convenience, I support the motion.

MR. PUTHUPALLI S. KRISHNA PILLAI: I oppose the amendment. This proviso was introduced by the Select Committee after a careful and deliberate study of the question. It appears that there is a possibility of mis-interpretation and mis-application of Section 341. I now find that the Select Committee were very wise in introducing this proviso. For the purpose of adopting this proviso, the Select Committee relied on the Banking Enquiry Committee Report submitted by very eminent persons who knew the legal position in the matter. They have said that banks working in Travancore should be prohibited from conducting chitties.

There is a strong reason why the banks in Travancore should not conduct chitties. Banks borrow and lend money in the shape of deposits and loans. Chitty schemes no doubt are based on the principle of long term loans. If it is only from funds collected from the subscribers, the bank may not suffer, but in practice that is the bank's money. A depositor might have deposited either in the current account or in savings bank account or in time deposit account. The time deposits mature say in an one or two. It is this money which goes into the hands of the prized subscribers, but there are loans that will never come back for the next 15 years. What will happen to a depositor when his deposit account matures. It will be found that all the banks in Travancore, which would otherwise have prospered, have failed to repay the money at maturity. The reason is that such money is in the hands of the chitty subscribers who seldom pays in time. That is the real condition of banks in Travancore. It is bad banking business to get short term deposits and pay out money on long term loans extending over a period of 10 or 15 years. If transactions of that sort are entered into by the bank, it is sure to collapse. As a matter of fact much of the embarassment of several of our banks is due to this system of getting short term deposits and lending out as long term loans. Such a method probably may be convenient to the bank, because it brings some money on which it can carry on its day to day business. But when the depositors ask for the return of deposits, the bank comes into trouble. It will not be in the interest of the bank or its depositor, that such a state of affairs is brought about. Therefore, I oppose the amendment.

PRESIDENT: The amendment before the House is to delete the proviso to clause 341.

The amendment was put to vote and lost.

The motion was put to vote and lost.

The question that clause 341 do form part of the Bill was put and carried.

The clause was added to the Bill.

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Clause 342.

MR. K. T. THOMAS: Sir, I move that "In Clause 342, delete the proviso occurring after sub-clause (2)" There are sixteen classes of business that may be legitimately carried on by a banking concern and they are mentioned in clause 341. In sub-clause 17 of that clause you will find that it is lawful for a banking concern to do all other things as are incidental or conducive to the promotion or advancement of the business of the company. Therefore it is my suggestion that without a reference to the Legislature the list of such items of business which may be legitimately carried on by a banking concern should not be enlarged. The Legislature has specified the 16 items of work that a banking company can legitimately carry on. It should be only after a reference to the Legislature that any other class of business may also be carried on by a banking company.

MR. P. KUNJUKRISHNAN: I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI. The motion is for deletion of the sub-clause that has been added to in the Select Committee. I find that there is a similar enactment in British India and it has been accepted only for this purpose. There is no clearly defined function of a banking institution. This is the first attempt made in India to define what banking business shall lawfully be carried on by banks. It was then thought that it may be discovered in the actual working of the Bill that there may be some matters which may have been omitted. In such cases it should not be that the work of the bank should be crippled. When such a contingency arises or when the Government are convinced that such a contingency has arisen, power is given to the Government to allow that banking business also to be carried on. It is only an amplification of sub-clause 17 of clause 341. It does not harm anybody.

The amendment was put to vote and lost.

The question that clause 342 do form part of the Bill was put and carried.

The clause was added to the Bill.

Clause 343.

The question that clause 343 do form part of the Bill was put and carried.

The clause was added to the Bill.

Clause 344.

MR. K. T. THOMAS: Sir, I move that "In Clause 344, line 4, substitute the word "fifteen" for the word "fifty." Clause 344 places restriction on the commencement of business by banking concerns and limits it to commence business only when shares of Rs. 50,000 are realised. A reference to the British Indian Act will show that there also it is fixed at Rs. 50,000. Perhaps, I may be met by the argument that in British India the amount is fixed at Rs. 50,000. But having regard to the conditions obtaining in Travancore I move that the bank may be allowed to commence business when Rs. 15,000 has been realised instead of Rs. 50,000 as in British India.

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MR. PUTHUPALLI S. KRISHNA PILLAI: I oppose the amendment. The amount of Rs. 50,000 has been fixed in this Bill not simply because it is found in the British Indian Act. This matter was considered and very seriously considered by this House in its earlier stage and by the Select Committee.

PRESIDENT: The honourable member is not entitled to refer to what has taken place in the Select Committee.

MR. PUTHUPALLI S. KRISHNA PILLAI: It is not by accident that this figure is put in. It is now said that the amount must be reduced to Rs. 15,000. A man who is able to collect Rs. 50,000 is allowed to start a banking concern. What is banking? We seem to have very curious notions about it. If with Rs. 15,000 banking company business is commenced, it can only be an improvident concern. A good portion will be immediately drawn out for initial expenditure. The bank begins work by giving money on promissory notes and in no time the Managing Director or the Agent puts up a notice and disappears. If a person is not in a position to start a bank with cash at least of Rs. 50,000 and run it on banking lines let him not begin any banking business at all. Else it will be a nuisance and a harm, an irreparable harm, to the people living in the State. When a bank is opened the poor depositors deposit their money in the bank and eventually wait indefinitely to get back their deposit. How many similar banks have we here. A reference to the Registrar would show that the banking business in this State is miserable. A bank which is run with only Rs. 15,000 collected in its initial stages will not be a bank in its real sense. It begins to carry on business by the borrowed capital, in banking language called deposit and that at high rates of interest. That will be ruinous. It will be a means of depriving the poor people of what little they have. If Travancore should have banks, it should have proper banks. It is not the half starved banks or the venturous banks that ought to come into existence. If any body cannot begin banking business with Rs. 50,000 it is better that he does not begin at all.

MR. K. T. THOMAS: Is not this amount of Rs. 50,000 required at the commencement of business?

MR. PUTHUPALLI S. KRISHNA PILLAI: If Rs. 50,000 cannot be collected before the commencement of business, I put the question why we should want banks which are not worth the name. Your purse containing Rs. 15,000, probably all in copper, is kept on the counter for a day or two to make an impression. You inveigle innocent depositors. With your Rs. 15,000 you can bring in Rs. 4 crores. But how will you pay back the money. I can quote the names of about a dozen banks that commenced business with Rs. 15,000 began to borrow money at high rates of interest and finally closed down and put up notices. It will not be possible thereafter even to see the Managing Director. The Registrar of Joint Stock Companies will be able to give more information on that point if required.

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The motion was put to vote and lost.

The question that clause 344 do form part of the Bill was put and carried.

The clause was added to the Bill.

Clauses 345 and 346.

The question that clauses 345 and 346 do form pait of the Bill was put and carried.

The clauses were added to the Bill.

Clause 347.

MR. JOSEPH VITHAYATHIL : I move that

To Clause 347, sub clause (1), add the following :—

"Provided that the provisions of this sub-section shall not apply to a banking company incorporated before the commencement of this Regulation till after the expiry of 2 years from the commencement of this Regulation."

PRESIDENT : The House will now take up for consideration the adjournment motion.

ADJOURNMENT MOTION RE: THE INNUMERABLE SALES OF IMMOVABLE PROPERTIES FOR ARREARS OF TAX.

MR. T. C. KESAVA PILLAI (*Kalkulam cum Vilavankod*) : തിരുവിതാംകൂറിലെ ജനങ്ങൾ ഇന്ന് അനുഭവിച്ചുവരുന്ന സങ്കടം ഇന്നതാണെന്നും എത്രയാണെന്നും പറഞ്ഞറിയിക്കത്തക്കവിധത്തിലല്ല ഇരിക്കുന്നത്. റവന്യൂ വകുപ്പിലേക്ക് ആണ്ടുതോറും കിട്ടുന്നതായ തുക അതു പിരിക്കുന്നതിനുള്ള കഷ്ടതയുമായി താരതമ്യപ്പെടുത്തി നോക്കുമ്പോൾ തീരെ യോജിക്കാത്തവിധത്തിലാണിരിക്കുന്നത്. തിരുവിതാംകൂറിലെ ആകെ മൊത്തമുള്ള ൨,൫൩,൦൦,൦൦൦ൽ ചിലപ്പോൾ രൂപായിൽ ഭൂനികുതി ഇനത്തിൽ വരുന്നത് ൫൨,൦൦,൦൦൦ൽ ചിലപ്പോൾ രൂപാമാത്രമാണ്. ഈ ൫൨,൦൦,൦൦൦ന്റെ മുക്കാൽപങ്കും ജനങ്ങൾ സ്വയമേവ പകുതിക്കച്ചേരികളിൽ കൊണ്ടു കൊടുക്കുന്നതാണ്. ബാക്കി തുച്ഛമായ ഒരു സംഖ്യ പിരിച്ചെടുക്കുന്നതിനു ഗവണ്മെന്റു ചെയ്തുവരുന്ന പ്രയത്നം എത്രമാത്രമുണ്ടെന്ന് ആലോചിക്കുമ്പോൾ വാസ്തവത്തിൽ ജനങ്ങൾ വളരെ കഷ്ടപ്പെടുന്നു എന്നുള്ള സംഗതി ബോദ്ധ്യപ്പെടുന്നതാണ്. സമീപകാലത്തുള്ള തിരുവിതാംകൂർ ഗസറ്റിന്റെ വണ്ണം നോക്കിയാലും ഈ സംഗതി മനസ്സിലാക്കാവുന്നതാണ്. റവന്യൂകമ്മീഷണർ അവർകൾ അയക്കുന്ന കർശനമായ ഉത്തരവുകളുടെ തീഷ്ണതകൊണ്ടു പാവപ്പെട്ട കാരന്മാർ കണ്ടമാനം വസ്തുക്കളുടെ വിസ്തീർണ്ണം കുറച്ചും അതിന്റെ ന്യായമായ വിലയെ അവഗണിച്ചും ലേലത്തിനു ലിസ്റ്റു തയ്യാറാക്കി അയയ്ക്കുകയാണ്

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